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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

) No. P1300CR20081339

) Div. 6

) **MOTION TO VACATE ORDER**
) **GRANTING STATE'S MOTION**
) **TO RECONSIDER DENIAL OF**
) **MOTION IN LIMINE TO**
) **PRECLUDE ANONYMOUS**
) **EMAIL**

22 Steven DeMocker, by and through counsel, hereby moves this Court to vacate its
23 order granting the State's Motion to Reconsider Denial of Motion In Limine to Preclude
24 Anonymous Email. This motion is based on the Court's lack of subject matter
25 jurisdiction to reconsider the prior final ruling of Judge Lindberg regarding the
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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2010 SEP 15 AM 8:37 ✓

JEANNE HICKS, CLERK

BY: B. Chamberlain

1 anonymous email.¹ Whether this Court has the authority to reconsider the prior ruling
2 on the anonymous email involves the Court's subject matter jurisdiction because it
3 involves the Court's "power . . . to hear and determine a controversy." *State v. Chacon*,
4 221 Ariz. 523, 526 ¶ 5, 212 P.3d 861, 864 (App. 2009) (quoting *Marks v. LaBerge*, 146
5 Ariz. 12, 15, 703 P.2d 559, 562 (App. 1985)). Motions involving a court's subject
6 matter jurisdiction have no timeliness requirement, because subject matter jurisdiction
7 may be raised at any time and cannot be waived by a defendant. *State v. Flores*, 218
8 Ariz. 407, 410 ¶ 6, 188 P.3d 706, 709 (App. 2008). This motion is supported by the
9 following Memorandum of Points and Authorities.
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12 MEMORANDUM OF POINTS AND AUTHORITIES

13 14 **I. Arizona law clearly and unequivocally divests the Superior Court of subject 15 matter jurisdiction to reconsider prior final rulings of the Superior Court.** 16

17 ¹ We are well aware that in our recent pleadings on this matter we had failed to recognize that
18 Judge Lindberg's ruling was a final ruling. We had included a reference to that minute order
19 issued on June 3 in our 174-page summary on "DeMocker Evidentiary Rulings." The correct
20 references appear on page 173. As noted above, this Court brought the fact that this was indeed
21 a "final ruling" to the attention of all counsel. This raised the subject matter jurisdiction
question. We now understand that this may be precisely what was on this Court's mind when
the Court began the proceedings on September 9 by emphasizing this fact.

22 Because reconsideration is barred, consideration of the "prejudice" question left open by this
23 Court is now unnecessary. We had been preparing to file a supplemental pleading addressing
24 the prejudiciality of the change in ruling at this stage, but in light of the clear jurisdictional law
25 on the issue we have laid that drafting aside. As also noted above, the likelihood of prejudice
26 arising from changed rulings during a trial is one of the reasons why reconsideration of final
27 rulings is prohibited. An appreciation of the significant actual prejudice to Mr. DeMocker in
28 this case is unnecessary to the ruling we now bring to this Court. If the Court believes that
prejudice is in any way necessary to the Court's decision to deny the State's Motion, we will
promptly finalize and file a further pleading.

1 “It is well settled that ‘a superior court judge has no jurisdiction to review or
2 change the judgment of another superior court judge when the judgment has become
3 ‘final.’ ” *Bogard v. Cannon & Wendt Elec. Co., Inc.*, 221 Ariz. 325, 333 ¶ 26, 212
4 P.3d 17, 25 (App. 2009) (quoting *Davis v. Davis*, 195 Ariz. 158, 161, ¶ 11, 985 P.2d
5 643, 646 (App.1999)). This limit on jurisdiction applies not just to final dispositions of
6 cases but to reconsideration of motions as well. *See Dunlap v. City of Phoenix*, 169
7 Ariz. 63, 66, 817 P.2d 8, 11 (App. 1990) (“[T]he trial judge has jurisdiction to
8 reconsider the motion unless the first decision was a final judgment.”).

11 Rule 16.1(d) of the Arizona Rules of Criminal Procedure allow for
12 reconsideration of pretrial determinations, even if the judge who is reconsidering is
13 different from the judge who made the original determination. *See State v. King*, 180
14 Ariz. 268, 279, 883 P.2d 1024, 1035 (1994). However, Rule 16.1 does not contemplate
15 a limitless series of motions to reconsider pretrial rulings that ends only when the jury
16 returns a verdict. In *King*, the Arizona Supreme Court repeatedly emphasized that
17 reconsideration of a prior ruling by a new judge was permissible only when the ruling is
18 nonfinal: “[The law of the case doctrine] does not prevent a judge from reconsidering
19 his or her previous **nonfinal** orders. Nor does it prevent a different judge, sitting on the
20 same case, from reconsidering the first judge's prior, **nonfinal** rulings.” *Id.* (emphasis
21 added) (internal quotations and citations omitted).

24 A new judge in a criminal case may only reconsider the rulings of the prior judge
25 when, as in *King*, “the record suggests that his predecessor left [the] question open for
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1 reconsideration.” *Id.* at 280, 883 P.2d at 1036. If reconsideration has been denied and
2 the ruling is final, the Superior Court no longer has jurisdiction over the question.
3 *Bogard*, 221 Ariz. at 333 ¶ 26, 212 at 25. If the State feels that a judge’s final ruling
4 makes a mistake of law, the proper solution is a special action to the Court of Appeals,
5 see Ariz. R. P. for Special Actions 1, 4, or to raise the issue on cross-appeal after a
6 conviction and appeal by the defendant, see A.R.S. § 13-4032(3).
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9 **II. Judge Lindberg’s ruling on the motion to preclude the anonymous email**
10 **was a final ruling that divested this Court of jurisdiction to reconsider.**

11 The minute entry of June 3, 2010 makes plain that Judge Lindberg’s ruling on
12 the motion in limine to suppress the anonymous email was final within the context of
13 this criminal trial.² Judge Lindberg heard arguments and then denied the motion. He
14 later reconsidered the motion, and confirmed that his original ruling would stand. At
15 that point, the question was ripe for a special action to the Court of Appeals. See, e.g.,
16 *State v. Campoy*, 220 Ariz. 539, 541 ¶ 1, 207 P.3d 792, 794 (App. 2009) (special action
17 by State seeking reversal of ruling favorable to defendant on motion in limine).
18

19 Notwithstanding the State’s characterization of Judge Lindberg’s ruling, there
20 can be no serious argument that it was not final. This Court made the finality of Judge
21 Lindberg’s ruling plain during oral arguments on the State’s motion to reconsider:
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23 “Judge Lindberg made a very clear ruling on this issue.

24 * * *

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² In civil trials, interlocutory rulings may be appealed pursuant to A.R.S. § 12-2101 and Rule
26 54, Ariz. R. Civ. P. *Bilke v. State*, 206 Ariz. 462, 467, 80 P.3d 269, 274 (2003). There are no
27 comparable rules or requirements for criminal matters.

1 I am the one that announced today **it was a final ruling**. It was
2 briefed as not quite a final ruling before, but **in fact, it was a**
3 **final ruling.**"

4 Partial Tr. 9/9/2010 at 2, 12 (quoting this Court) (emphasis added).

5 The finality of the ruling is enhanced by the fact that Judge Lindberg ruled
6 against the State. A criminal defendant may appeal an adverse ruling on a motion in
7 limine after a conviction. *See, e.g., Bell v. State*, 143 Ariz. 305, 310, 693 P.2d 960, 965
8 (App. 1984). The State, on the other hand, has "no equally plain, speedy, or adequate
9 remedy by appeal" when a court makes an adverse ruling on a motion in limine.
10 *Campoy*, 220 Ariz. at 541 ¶ 1, 207 P.3d at 794 (quoting Ariz. R. P. Spec. Actions 1(a)).
11 Judge Lindberg's denial of the State's motion for reconsideration made the ruling
12 unequivocally final and "appealable" within the State's limited options for appeal.³

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15 Because Judge Lindberg left no doubt that he denied reconsideration pursuant to
16 Rule 16.1(d) and entered a final ruling, this Court did not have jurisdiction over the
17 State's motion to reconsider. *See King*, 180 Ariz. at 279, 883 P.2d at 1035.

18
19 **III. Improperly reconsidering Judge Lindberg's ruling implicates the very evils**
20 **that divestment of subject matter jurisdiction seeks to avoid.**

21 Even when rulings are nonfinal, engaging in "horizontal appeals" by asking one
22 Superior Court judge to overturn another judge's ruling is discouraged because the
23 practice wastes judicial resources and encourages judge shopping. *State ex rel. Romley*

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25 ³ The State may directly appeal an adverse ruling of law, but only if the defendant is convicted
26 and then chooses to appeal. A.R.S. § 13-4032(3). A special action on an adverse ruling of law
27 is the only remedy wholly in the control of the State, and thus a special action is the only option
28 available to the State that is comparable to a civil litigant's right to a direct appeal.

1 v. *Superior Court In and For County of Maricopa*, 183 Ariz. 139, 142, 901 P.2d 1169,
2 1172 (App. 1995) (citations omitted). These dangers increase in prominence when the
3 ruling in question is a final ruling, and are present in this case.
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5 Reversing Judge Lindberg's ruling on the anonymous email wastes judicial
6 resources because a great deal of evidence presented to the jury over the past months
7 was presented with the intention of linking it to the events described in the email. Both
8 the Defendant and the State have elicited extensive testimony that serves the sole
9 purpose of supporting or refuting the account of the murders contained in the email.
10 Moreover, the prejudicial impact of improperly changing Judge Lindberg's ruling now
11 creates the likelihood of a mistrial, a reversal on appeal, or a reversal in a Rule 32
12 proceeding. Had the State filed a special action when Judge Lindberg finally denied the
13 motion in limine back in early June, none of this waste would have occurred. If the
14 Court had refused to hear the State's motion to reconsider, none of this waste would
15 have occurred. It is only by granting the motion to reconsider despite lacking the
16 jurisdiction to do so that this Court risks laying waste to all of the trial proceedings since
17 June 3, 2010.
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21 Moreover, the State's decision to request reconsideration six weeks after the final
22 ruling and after Judge Lindberg's unfortunate illness is a prime example of judge
23 shopping. The State could have filed a special action on June 4, 2010. Not only did
24 they not do so, they proceeded with trial as if they assumed Judge Lindberg's ruling
25 would stand. The State sought reconsideration only when presented with an unexpected
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1 opportunity for a “horizontal appeal.” Rather than convincing the Court of Appeals to
2 exercise special action jurisdiction, the State chose instead to convince this Court to
3 exercise nonexistent jurisdiction. Discouraging this kind of judge shopping (and court
4 shopping) is the reason the Superior Court has no jurisdiction to reconsider final rulings.
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6 CONCLUSION

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8 Judge Lindberg’s original decision to deny the State’s motion in limine to
9 preclude the anonymous email was a final ruling. As a result, this Court has no subject
10 matter jurisdiction over the question, and no authority to reconsider the ruling. To the
11 extent that Judge Lindberg’s ruling was a mistake of law, the proper remedy is to file a
12 special action at the Court of Appeals. A “horizontal appeal” to another judge of the
13 Superior Court is disallowed under Arizona law. The Defendant respectfully requests
14 that the Court vacate its ruling granting the State’s Motion to Reconsider Denial of
15 Motion In Limine to Preclude Anonymous Email, and deny the State’s motion due to
16 lack of subject matter jurisdiction. This Motion implicates important bedrock
17 Constitutional considerations. Mr. DeMocker’s right to due process and his right to put
18 on a defense—rights protected by the Federal and State Constitutions—would be
19 compromised by allowing reconsideration of this important issue that had been resolved
20 by Judge Lindberg before this trial began. Those rights can be restored by the denial of
21 the State’s Motion.
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1 DATED this 15th day of September, 2010.

2
3 By: 

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13 **ORIGINAL** of the foregoing hand delivered for
14 filing this 15th day of September, 2010, with:

15 Jeanne Hicks
16 Clerk of the Court
17 Yavapai County Superior Court
18 120 S. Cortez
19 Prescott, AZ 86303

20 **COPIES** of the foregoing hand delivered this
21 this 15th day of September, 2010, to:

22 The Hon. Warren R. Darrow
23 Judge Pro Tem B
24 120 S. Cortez
25 Prescott, AZ 86303

26 Joseph C. Butner, Esq.
27 Jeffrey Paupore, Esq.
28 Prescott Courthouse basket


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